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5 UNITED STATES DISTRICT COURT
6 EASTERN DISTRICT OF WASHINGTON

7 JERUSALEN BARAJAS, a single
8 man,

9 Plaintiff,

10 v.

11 TRAVELERS HOME AND MARINE
12 INSURANCE COMPANY, doing
business in Grant County,

13 Defendant.

CASE NO. 2:16-CV-0432-TOR

ORDER GRANTING DEFENDANT'S
PARTIAL MOTION TO DISMISS

14
15 BEFORE THE COURT is Defendant's Rule 12 Partial Motion to Dismiss.
16 ECF No. 19. Plaintiff is represented by Julie A. Anderson. Defendant is
17 represented by Ronald J. Clark. This matter was heard without oral argument on
18 May 15, 2017. The Court has reviewed the motion and record herein, and is fully
19 informed.

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BACKGROUND

On November 15, 2016, Plaintiff Jerusalem Barajas¹ (“Plaintiff”) filed suit against Defendant Travelers Home and Marine Insurance Company (“Defendant”) in Chelan County Superior Court. ECF No. 1-2. Pursuant to 28 U.S.C. §§ 1441, 1446(b), Defendant removed the action to this Court invoking diversity jurisdiction under 28 U.S.C. § 1332. ECF No. 1.

On March 1, 2017, the Court entered an Order dismissing Plaintiff’s claims that Defendant violated the Washington Insurance Fair Conduct Act (“IFCA”) (RCW 48.30.015) and the Washington Law Against Discrimination (“WLAD”) (RCW 49.60 *et seq.*). ECF Nos. 12, 1-2 at ¶¶ 3.7, 3.9-3.10. Notwithstanding, the Court granted Plaintiff “leave to file an amended complaint (with Plaintiff’s name spelled correctly) within thirty (30) days.” ECF No. 12 at 13.

¹ Despite direction from the Court to provide Plaintiff’s correctly spelled name, ECF No. 12 at 13, Plaintiff’s counsel continues to spell Plaintiff’s name wrong, ECF Nos. 16, 18. The Court observes that Plaintiff has signed his name “Barajas”, ECF No. 1-2 at 5, and the underlying contract of insurance is listed in the name “Barajas”, ECF Nos. 7-3, 19 at 3 n.6. The Court will use that spelling and will direct the Clerk to amend the docket accordingly.

1 Plaintiff filed an Amended Complaint on March 17, 2017, and again on
2 March 28, 2017. ECF Nos. 16, 18. Plaintiff also filed a Notice of Washington
3 State Constitutional Question Related to RCW 48.30.015 on March 8, 2017, *see*
4 ECF No. 14, which the Court certified to the Washington Attorney General for
5 consideration on March 9, 2017, *see* ECF No. 15. Thereafter, the Court denied
6 Plaintiff's request for reconsideration of the Court's Order Granting Defendant's
7 Partial Motion to Dismiss. *See* ECF No. 21.

8 For the second time, Defendant moves to dismiss Plaintiff's claims (1) under
9 IFCA for Plaintiff's continued failure to provide written notice as required by
10 RCW 48.30.015(8)(a), and (2) under the WLAD for failing to state a claim upon
11 which relief may be granted. *See* ECF Nos. 6, 19, 20 at ¶ 3.

12 Plaintiff has failed to respond to the motion.

13 In response to Defendant's first motion to dismiss, the Court admonished
14 Plaintiff's counsel for the late filing of Plaintiff's memorandum in response to
15 Defendant's dismissal motion, in violation of Local Rule ("LR") 7.1(b)(2)(B), and
16 failure to seek permission to submit the late filing. *See* ECF No. 6 at n.3. The
17 Court cautioned Plaintiff that failure to comply with the Local Rules or timely
18 respond, could result in adverse action by the Court. *Id.* With respect to the
19 instant motion, Plaintiff was required to file a responsive memorandum by May 4,
20

1 2017. *See* LR 7.1(b). Plaintiff has failed to respond or seek permission to file a
2 late submission.

3 **DISCUSSION**

4 For the reasons previously stated, ECF No. 12, the Court finds that because
5 Plaintiff still has not substantially complied with the statutory notice requirement,
6 his statutory IFCA claim is not properly before the Court. Accordingly, the Court
7 dismisses Plaintiff's IFCA claim.

8 Likewise, for the reasons previously stated, ECF No. 12, Plaintiff's WLAD
9 claim is dismissed. Plaintiff makes only conclusory allegations of unequal
10 treatment, while the WLAD requires a showing of unequal treatment and that the
11 unequal treatment was motivated by race.

12 Pursuant to Local Rule 7.1(b)(2)(B), an opposing party has 21 days to file a
13 response to a dispositive motion. The failure to timely do so may be considered by
14 the Court as "consent to the entry of an Order adverse to the [defaulting] party[.]"
15 LR 7.1(d).

16 **ACCORDINGLY, IT IS HEREBY ORDERED:**

- 17 1. The Clerk shall amend the docket to reflect the spelling of Plaintiff's last
18 name as "Barajas."
- 19 2. Defendant's Rule 12 Partial Motion to Dismiss (ECF No. 19) is


20 **GRANTED**; Plaintiff's IFCA and WLAD claims are **DISMISSED**.

1 3. The Clerk shall promptly issue a Notice of Scheduling Conference.

2 The District Court Executive is directed to enter this Order and furnish
3 copies to the parties.

4 DATED: May 15, 2017.




THOMAS O. RICE
Chief United States District Judge